

DEC 21 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In re )  
 )  
Review of the Prime Time ) MM Docket No. 94-123  
Access Rule, Section )  
73.658(k) of the Commission's )  
Rules )

Joint Network Comments on Motion of the  
Coalition to Enhance Diversity

Capital Cities/ABC, Inc., CBS Inc. ("CBS") and National  
Broadcasting Company, Inc. ("NBC"), by their attorneys, hereby  
submit their comments in opposition to the above Motion For An  
Order Requiring Commenters To Serve On Other Commenters All Data  
Relied On In Any Economic Analysis They Submit To The Commission  
("Motion").

The Coalition to Enhance Diversity (the "Coalition") asks  
the Commission to order all parties who submit economic analyses  
in the above proceeding to "file with the Commission, and serve  
on all commenters [who wish to receive it] (a) all data relied  
on the economic analysis, and (b) a copy of the materials from  
which such data is derived." Motion at p.1.

Capital Cities/ABC, CBS and NBC support the goal of the Coalition's Motion, which is to enable "independent review and testing" of "empirical evidence submitted by commenters." Motion at pp. 2-3. However, we respectfully suggest that the relief sought is inappropriate and overbroad for several reasons, and we urge that the Motion be denied.

First, the enormous and unprecedented burden it would entail would far outweigh any benefit that could be derived. In essence, what is being sought are both work papers and copies of data sources. The economists who have been retained by the network commenters will be drawing upon a vast array of data sources in order to respond to the Commission's wide-ranging inquiry. From each of these sources, thousands of data points will be selected and analyzed. In light of the breadth of the undertaking by the networks' economists, the burden of the proposed requirement would be huge. So long as the analysis that is submitted to the Commission accurately describes sources and methodology, there should be no need to impose the additional burden of copying and supplying work papers and raw material. The proposed requirement would also likely inhibit the process of economic analysis because it would necessitate special procedures in order to separate the economists' confidential thought processes and client communications from the data required to be divulged.

In any case, much of the data we are collecting will be gathered from Nielsen Media Research source material either in compilations regularly provided to us as Nielsen customers (and presumably available to some Coalition members as well), or in compilations we have specially commissioned (at considerable cost). In both cases, Nielsen generally restricts the further distribution of its proprietary work product and, for example, specifically bars divulgence of its raw data "to non-client stations or their representatives under any circumstances." In any event, it would be unfair, as well as unnecessary, for us to bear the expense of generating data from reputable, and commercially available, sources such as Nielsen and then be subject to an order requiring us to share it with all comers.

Finally, some of the raw data Capital Cities/ABC, CBS and NBC develops for analysis by our economists may be confidential business information. As to any such data, our intent would be to submit it individually to our consulting economist, who would aggregate it and present it in a way that is useful to the Commission while protecting the confidentiality of the company-specific data. We of course would be prepared to submit any such underlying data to the Commission under seal upon request, as long as it is withheld from public inspection pursuant to § 0.459 of the Commission's Rules. We would not be willing,

however, to share such disaggregated information with each other, much less with other commenters in the proceeding.

As noted above, the burden and expense of complying with a broad order such as that proposed in the Motion would not result in a commensurate benefit to the Commission's decision-making process, especially since the agency has the discretion to consider the sources of information and the way the information is used in determining the weight it will be given. The obfuscation of source citations or the unreasonable withholding of meaningful underlying data from the Commission can and should affect that determination, and parties are free to bring such situations to the agency's attention.

Indeed, the Commission should take this opportunity to exhort commenters that it will only consider economic data which is based on adequately disclosed source material. To the extent that sources are commercially available, other participants in the proceeding should be given enough information to locate and evaluate them without unnecessary delay. If cited sources are neither commercially available data bases nor contain confidential business information of individual companies, the Commission could request submission of underlying material for the record if it determines such action to be necessary in particular circumstances.

In sum, Capital Cities/ABC, CBS and NBC urge the Commission to deny the Coalition's Motion as unnecessary, while reaffirming the importance of well-documented economic analysis that is capable of evaluation both by other interested parties and by the Commission.

Respectfully submitted,

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December 21, 1994

Certificate of Service

I, Mark W. Johnson, certify that a copy of the foregoing Joint Comments In Support Of Extension Of Time To File Comments was sent this 21st day of December, 1994, via hand delivery, to each of the following:

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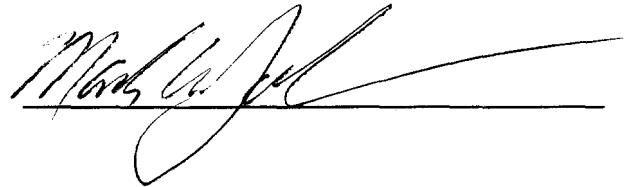
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